limited to" collocation, and the equally clear statement in the Local Competition Order (¶ 549) that a "requesting carrier may choose any method of technically feasible . . . access to unbundled elements."[4]

Finally, although the plain language of section 251(c)(3) and Rule 51.321 disposes of BellSouth's position, it is worth noting that BellSouth's position also is foreclosed by the Eighth Circuit's decision. The Eighth Circuit upheld Rule 51.321 and other important unbundling rules (including Rules 51.5, 51.307, 51.309, 51.311(a), (b), and 51.313) against the claim that these rules "provide[d] competing carriers with such extensive access to the incumbent LECs' networks that they will thwart the Act's principal purpose." Iowa Utils. Bd., 120 F.3d at 815-816; see id. at 815-17, 818 n.38 (upholding "all of the Commission's unbundling regulations except for [certain specific provisions]").

The Eighth Circuit also held that a requesting carrier is entitled to use methods of combining network elements that do not require it to "own or control some portion of a telecommunications network" and, in particular, that it "may achieve the capability to provide telecommunications services completely through access to the unbundled elements of an incumbent LEC's network." Id. at 814 (emphasis added); see id. ("FCC's determination that a competing carrier may obtain the ability to provide telecommunications services entirely through an incumbent LEC's unbundled network elements is reasonable") (emphasis added); cf. Local Competition Order ¶¶ 320-341. Any requirement that all competing LECs gain access

---

[4] The Chairman's cover letter of March 20th also indicates (p.3) that the summaries were part of an "on-going process" of "dialogue;" this was very much true with respect to legal issues concerning UNE-combinations, a topic on which AT&T submitted a paper to the Commission that same day. See Letter of Robert Quinn to Carol Mattey, March 20, 1998 (transmitting AT&T's paper "The Incumbent LEC's Duty To Permit New Entrants To Combine Unbundled Network Elements At Any Technically Feasible Point").

to unbundled network elements through collocation arrangements would render this holding a nullity. Collocation requires a CLEC to own or control a portion of a telecommunications network -- viz, that portion of the central office and those facilities through which the competing LEC's calls flow.[5] E.g., Montana PSC Decision ¶ 19 (U S WEST's collocation requirement "is contrary to the Eight Circuit's holding that CLECs can provide services entirely through the ILEC's unbundled elements without owning or controlling any of their own facilities"). In addition, because collocation is impractical and uneconomical for carriers seeking to use only unbundled network elements, the practical impact of a collocation requirement is to limit the use of unbundled network elements to carriers who need collocation to combine them with their own switches or other facilities, contrary again to the Eighth Circuit's holding.

In sum, the Eighth Circuit's decision confirms what section 251(c)(3) makes clear: Incumbent LECs must accommodate requests from competitors for access at "any" technically feasible point. Accordingly, even if collocation were a reasonable, nondiscriminatory method of accessing unbundled network elements, BellSouth's refusal to accommodate CLEC requests for other technically feasible methods violates BellSouth's duties under section 251(c)(3) and demonstrates that BellSouth has not "fully implemented" its checklist obligations. BellSouth's refusal is thus a basis for denying BellSouth's application independent from the inherent unreasonableness of collocation itself.

---

[5] Similarly, arguments that virtual collocation does not require a competing LEC to own portions of its own network exalt form over substance. In a typical virtual collocation arrangement, the incumbent demands that collocating carriers purchase, and then transfer title, of the collocated equipment to it for a nominal fee (usually $1). The fact that the incumbent technically holds title to the virtually collocated equipment does not avoid the real-world fact that the competing carrier is required to incur the full cost (less $1) of this network equipment.

2. A Collocation Requirement Is Inherently Discriminatory

BellSouth's proposed collocation requirement should be rejected also because collocation is an inherently unreasonable, discriminatory, and anticompetitive method of combining unbundled network elements.

(a) Inherent Defects: As the affidavits of Mr. Falcone and Mr. Joel explain in detail, using collocation as a method to combine unbundled network elements makes no sense from a network design perspective. See Falcone Aff. and Attachment 1 (Joel Aff.). Each of BellSouth's proposed variations on collocation -- physical, cageless, and virtual -- requires the same labor-intensive manual work at the Main Distribution Frame ("MDF") to establish two new cross-connections between the CLEC's new terminal blocks on the MDF and the incumbent's terminal blocks every time a customer switches to a CLEC. This is precisely the sort of manual work that network engineers have tried for decades to eliminate from the network (see Joel Aff. ¶¶ 22, 28-54), and that ILECs perform today only when necessary. See Falcone Aff. ¶ 63 & n.16. Thus, "from a purely technical standpoint," collocation "makes no sense." Pennsylvania ALJ Business Market Decision at 27. The business obstacles that collocation imposes on a CLEC seeking to combine unbundled network elements are so great as to preclude the use of UNE-combinations to serve large volumes of residential and small business customers.

First, the manual cutover process introduces an unacceptably high risk of human error, made all the more problematic because it is BellSouth technicians that would perform all of the work of disconnecting and reconnecting the cross-connects for each new CLEC customer. Even under the best of circumstances, this manual cutover process will put new CLEC customers out of service for at least some significant period of time. When mistakes are made -- and in

manual-intensive processes, mistakes are inevitable -- CLEC customers will lose service for extended periods of time. Examples of human error include failing to check the line for an established call before disconnecting the cross-connect; connecting a cross-connect to the wrong terminal; improperly attaching the cross-connect; and detaching cross-connects inadvertently when, for example, "mining" old cross-connects from the frame. Falcone Aff. ¶¶ 58-61; 113-221. These and other problems of "plant operating error" are real, and will disproportionately affect CLEC customers, who will need at least twice as many cross-connections as ILEC customers. Id. ¶ 16. Indeed, even in the relatively simpler world of provisioning unbundled loops (which Mr. Milner concedes is more "complex" than what BellSouth does for itself today, see Milner Aff. ¶¶ 68-75), BellSouth continues mistakenly to take the CLEC "'customer out of service, often in the midst of a business day'" and to cause extended outages "'of three hours'" to accomplish what was promised to last "'five minutes.'" Falcone Aff. ¶¶ 66-67 (quoting testimony of NEXTLINK and ACSI).

BellSouth's response (Br. 39) that manual cutover work is "routine" is highly misleading. BellSouth, like all other ILECs, does not remove any cross-connections when residential POTS customers disconnect their service (see Falcone Aff. ¶ 63 & n.16 (quoting BellSouth Interrogatory Response)); BellSouth leaves the cross-connections in place so it can reconnect service electronically for the next customer. Id. Moreover, the reality is that even "routine" manual work leads to errors. BellSouth's willingness to subject CLECs and their customers to the mercies of BellSouth's technicians is in stark contrast to its own categorical refusal to permit CLEC technicians even supervised access anywhere near the equipment that serves BellSouth's customers -- for fear, of course, of human error. Id. ¶¶ 150, 154.

Second, even assuming that BellSouth's technicians would never again make a single mistake, BellSouth could not accommodate the rush of orders that a state-wide service offer to residential and small-business customers would generate. Even assuming (unrealistically) that BellSouth's stated intervals for establishing collocation arrangements were complete and that BellSouth met them, it would take BellSouth over 4 years just to provide AT&T with space in every central office in Louisiana, which AT&T would need to make a state-wide service offer. Falcone Aff. ¶ 77.

Moreover, once the arrangements were made, BellSouth's technicians would be unable to keep up with the large, volatile, and unpredictable demands of intensive start-up statewide competition. Notably, one of the reasons for rejecting Ameritech's Michigan application was that Ameritech's electronic systems could not handle unpredictable increases in order volumes that were nevertheless within Ameritech's stated capacity. Ameritech Michigan Order ¶¶ 189-99; see, e.g., id. ¶ 191 (incumbent LEC's "ability to handle an increasing volume of orders" is "a critical component in order for competition to develop"); id. ¶ 199 (order volumes during market entry will "be relatively volatile"). BellSouth's manual cutover processes would obstruct entry at least as much, if not more, than the manual ordering processes that the Commission has already found inadequate to support vigorous competition.

For example, BellSouth's experience is with moving established customers on jobs that can be planned and coordinated long in advance; in a competitive environment, no such pre-planning is possible. Falcone Aff. ¶¶ 64, 148. Similarly, it is doubtful that BellSouth has enough technicians available to handle the volume of work that would be needed; many central offices are unmanned or staffed without technicians, and those with technicians are presumably employing them today to carry out other tasks. Id. ¶¶ 92-94, 97. Most tellingly, the problem

cannot be solved by hiring an army of new technicians: There are limits to the number of technicians that can work on a frame at one time without causing productivity to fall and errors to increase. Id. ¶ 89. BellSouth's only response -- that it will permit CLECs to "pre-wire" their frames (Br. 39) -- is a non-sequitur that vividly illustrates BellSouth's failure to address the seriousness of the problem. Falcone Aff. ¶ 146.

Third, in addition to these human-resource constraints, there are practical limits to the number of new connector blocks that can be added to existing MDFs. Falcone Aff. ¶¶ 104-06. Unless the MDF can be easily expanded -- and in at least some central offices, that will not be the case -- CLECs will face additional and indeterminate delays in being able to sign up new customers. Id. These delays, moreover, will undermine the competitive efforts of facilities-based competitors (e.g., those with their own switches) as well as UNE-combination-based competitors. Requiring collocation to combine UNEs "wastes collocation space for no good reason." Pennsylvania ALJ Business Market Decision at 27. The limited space both for physical collocation and for locating new blocks at the MDF should be reserved for facilities-based carriers who must use it, not squandered on UNE-combination-based carriers for whom these resources merely add expense and delay to no purpose. Falcone Aff. ¶¶ 72-73.

Finally, collocation imposes costs, risks, and restrictions disproportionately on CLECs. Even BellSouth's virtual collocation proposal imposes high and unnecessary manual labor costs to cut over each new customer. Falcone Aff. ¶¶ 52, 124-28. Virtual collocation also builds in a permanent cost-advantage for BellSouth, because BellSouth's manual labor costs will always be lower than the CLEC's. For example, when BellSouth "wins back" a customer, it not only gets to charge the CLEC a "disconnect" charge, but BellSouth has only to establish one new cross-connect rather than two to resume serving the customer. Falcone Aff. ¶ 149. And

BellSouth will always be able to offer service to every customer without degrading service, while CLECs will be unable to compete effectively for BellSouth's customers that are served by Integrated Digital Loop Carrier or at remote switching modules. Id. ¶¶ 107-12.

These problems are not limited to carriers that wish to combine unbundled loops with unbundled switching. For example, BellSouth also refuses to combine unbundled switching with any transport other than "common transport." Br. 39; Varner Aff. ¶ 68. Here again, a collocation requirement is entirely unnecessary, and will impose additional and anticompetitive costs on CLECs seeking to combine unbundled switching with dedicated transport to their own operator services and directory assistance ("OS/DA") platforms. Falcone Aff. ¶ 133. Worse still, BellSouth requires collocation for combining unbundled loops with unbundled transport. Br. 39; Varner Aff. ¶ 68. Not only is a collocation requirement unnecessary and unreasonable here, but it allows BellSouth to extend its competition-killing effects to competitors that would use their own switches (rather than unbundled switching) to compete. Falcone Aff. ¶¶ 134-38.

(b) Alternatives to Collocation: To date, BellSouth has refused seriously to consider other alternatives for combining UNEs. Falcone Aff. ¶¶ 152-55. BellSouth's intransigence is harmful to competition, because there are alternatives to collocation that are potentially more efficient. Id. ¶¶ 151-214. Indeed, while each of these alternatives has significant drawbacks -- and none offers CLECs the ability to compete that they would have if permitted to obtain existing combinations of unbundled network elements -- each nevertheless illustrates how, in requiring collocation, BellSouth is insisting on the most extreme and anticompetitive method imaginable. Id. ¶¶ 213-14.

The least discriminatory alternative is to permit CLECs to use the recent change capability of the switch to combine unbundled loops and unbundled switching electronically.

See Falcone Aff. ¶¶ 169-214. Predictably, BellSouth (Br. 40) singles out only this approach as objectionable, but its arguments plainly lack merit. BellSouth claims first that combining unbundled network elements electronically is inconsistent with the Eighth Circuit's decision. Id. That argument is not based on any language in the decision, however, and it could not be. That is because the issue of how unbundled network elements were to be combined by CLECs was not argued to, much less decided by, that Court.

Rather, it is based on a misreading of the United States' characterization of the decision in its petition for certiorari. In stating that "[c]entral" to the Eighth Circuit's holding was "the premise that elements are 'unbundled' . . . only if they are physically separated," the petition emphasized the term "physically" to highlight the contrast between the pricing separation that "unbundling" traditionally had been understood to require and the operational or practical separation and recombination requiring access to incumbent LEC networks that the Eighth Circuit had ordered. Petition for Certiorari, No. 97-831 at 25 (Nov. 1997) ("Petition"). This is clear from the immediately following sentences and paragraphs, which invoke the term "physical" separation to highlight the significance of the Eighth Circuit's rejection of the "separate pricing" approach: "That use of the term 'unbundle' -- to denote separate pricing of elements rather than physical separation of elements -- is the same use that the Commission and other regulatory agencies have consistently employed when, over the course of the past 15 years, they have adopted 'unbundling' policies designed to promote competition."[6] Indeed, to the extent that the Eighth Circuit's decision bears on this issue, it supports use of the recent change

[6] Petition at 26 (emphasis added); see also id. at 25-26 ("That construction of 'unbundled,' [to mean physically separated] however, conflicts with past regulatory usage, contradicts the plain meaning of the term, and converts one of the 1996 Act's most important pro-competitive tools into a statutory authorization of anti-competitive conduct.").

approach because recent change (unlike collocation) allows CLECs to "provide telecommunications services entirely through access to the unbundled elements of an incumbent LEC's network" and without having to "own or control some portion of a telecommunications network." Iowa Utils. Bd., 120 F.3d at 814.

BellSouth's fallback argument -- that recent change conflicts with paragraph 415 of the Local Competition Order -- is equally unfounded. That paragraph actually supports the use of recent change. It concludes, in response to incumbent LEC comments about network security and a purported need for physical partitioning of the switch (see Local Competition Order ¶ 403), that providing access to unbundled switching is technically feasible because it could be mediated through "electronic interfaces" that would preserve incumbent LEC "control" over the switch. Id. ¶ 415. Because access to the recent change capability for provisioning elements also would be mediated through electronic interfaces that would preserve incumbent LEC control over the switch, there is no more legitimate basis for concerns about "network security and reliability" with recent change than with access to OSS for ordering. Falcone Aff. ¶¶ 196-200. The ubiquitous access that Centrex customers have to the recent change process at switches that serve other Centrex customers, as well as the ILEC's POTS customers, is clear evidence that providing third parties access to recent change is technically feasible. Id. ¶¶ 197-98, 209-12. Indeed, even BellSouth does not challenge recent change on technical feasibility grounds, id. ¶ 155, yet these are the only legitimate grounds for objection that the statute affords.

(c) **State Commission Decisions**: State commissions that have taken the time to examine BOC-proposed collocation requirements have rejected them. Some have

done so in part on legal grounds, citing conflicts with the Act and with the Eighth Circuit's decision.[7]

In addition, some Commissions have rejected collocation requirements by focusing on collocation's deadening effect on UNE-based competition. For example, the Washington Utilities and Transportation Commission emphatically rejected an ILEC's collocation proposal, finding it anticompetitive both technically (because it "requires extra connections," "extra potential service failure points," and "would put customers out of service for a period of time long enough to discourage customers from switching to AT&T's services"), and economically (because it would "increase costs" and cause "Washington's consumers to suffer"). Washington UTC Decision at Section IV. Similarly, the Iowa Board recently concluded that US West's version of cageless collocation "is inefficient, expensive, inconsistent with network security, and provides discriminatory access to UNEs" and "was likely to seriously limit the practical availability of the UNE method of entry." Iowa BPU Decision at 21-23.[8]

---

[7] See, e.g., Florida PSC Decision at 52-53, 62-63 ("Nowhere in the Act or the FCC's rules and interconnection orders or the Eighth Circuit's opinions is there support for BellSouth's position"); Montana PSC Decision ¶ 19 (U S WEST's collocation requirement "is contrary to the Eight Circuit's holding that CLECs can provide services entirely through the ILEC's unbundled elements without owning or controlling any of their own facilities"); cf. Michigan PSC Decision at 30 (rejecting Ameritech's collocation requirement on state law grounds and noting that "nothing in the interconnection agreement, the [Federal Telecommunications Act], or the [Michigan Telecommunications Act] requires MCI to interconnect with Ameritech Michigan's network through use of collocation").

[8] See also California PUC Staff Report at 46-47; Montana PSC Decision ¶¶ 15-16 (collocation "is likely to be quite costly to new entrants" and "may constitute a barrier to CLEC entry" because such investment "makes little economic sense"). Other Commissions, while not mentioning collocation, have refused to permit BOCs to separate elements without engineering justification and where they would not do so for themselves. See Connecticut DPUC Decision at 31-33; Idaho PSC Decision at 5; Utah PSC Decision at 4-10.

Finally, some Commissions have rejected collocation requirements and ordered further inquiry into alternatives.[9] For example, the staff of the California PUC recently issued a report concluding that Pacific Bell had not demonstrated that its collocation requirement complied with section 251(c)(3). The staff expressed concern "that Pacific's [collocation-based] options for combining UNEs are costly, slow, and may not have equivalent reliability as Pacific's retail operations," and set in motion a collaborative process in which "staff will explore various options, including the use of the recent change capability, that do not require competitors to own their own facilities." Calif. PUC Staff Report at 46-47. The Texas PUC has ordered SBC to "offer at least . . . three methods to allow CLECs to recombine UNEs," including "virtual collocation of cross-connects at cost-based rates, access to recent change capability of the switch to combine loop port combinations, and electronic access such as Digital Cross Connect (DCS) for combining loop and port at cost based rates." See Texas PUC Decision at 4. Thus, states throughout the country, large and small, have refused to permit incumbent LECs to impose collocation requirements on CLECs seeking to combine unbundled network elements.

The willingness of states to pursue alternatives to collocation is yet one more -- and perhaps the most -- compelling reason for this Commission to reject BellSouth's collocation straitjacket here. Acceptance of BellSouth's position by this Commission would strongly undercut state incentives to conduct such investigations and simply encourage incumbent LECs

---

[9] Several commissions have done so without dispositively resolving the legal issues. See Colorado PUC Decision at 10; Massachusetts DPU Decision at 14 (noting that "insistence on collocation as the only answer to the UNE question very well may not meet the Act's Section 251 interconnection requirements as they relate to the provisioning of UNEs" and ordering further investigation into alternatives); New York PSC Decision at 2 (ordering a proceeding to "determine what method or methods Bell Atlantic-NY must offer to competitive carriers to enable them to provide service through the unbundled network elements they obtain from Bell Atlantic-NY").

to redouble their attempts to resist efforts to devise procompetitive alternatives for obtaining access and interconnection. The Commission should therefore endorse and commend the states' efforts to date, reaffirm the plain meaning of Rule 51.321, hold that BOCs may not impose collocation requirements on CLECs, and confirm that, where requesting carriers ask for technically feasible methods of accessing unbundled network elements, incumbents must provide them.

3. BellSouth Has Assumed No "Concrete And Specific Legal Obligation" To Provide Collocation For Combining Unbundled Network Elements

Finally, even if collocation were otherwise legally permissible and reasonable, BellSouth's application must be denied because BellSouth has nowhere assumed a "concrete and specific legal obligation" to permit CLECs to combine unbundled loops and unbundled switching (or other UNE-combinations) by means of collocation. See Ameritech Michigan Order ¶ 110; South Carolina Order ¶¶ 81, 197, 200 & n.588, 205 & nn.604-05.

(a) Need For Interconnection Agreements: To begin with, because this is a Track A application, BellSouth must demonstrate a concrete and specific commitment to providing UNE-combinations "pursuant to state-approved interconnection agreements." Ameritech Michigan Order ¶ 110; see § 271(c)(1)(A) (BOC must have "entered into one or more binding agreements that have been approved under Section 252" and "specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities"); id. § 271(c)(2)(A) (requiring Track A applicants to demonstrate that they are "providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A)" that "meets the requirements of" the competitive checklist).

Providing checklist items through interconnection agreements achieved through the section 252 process is crucial to the achievement of the Act's goals. That process, which

requires a BOC to make written, legally binding commitments, and gives CLECs the ability to arbitrate the adequacy of those commitments and enforce them through contractual and statutory penalties, is essential to establish meaningful terms on which CLECs can rely. Until a BOC commits in an interconnection agreement to terms for providing a checklist item, a CLEC cannot test the BOC's ability to provide it or count on having it as part of its market entry plan.

In this regard, BellSouth's SGAT is no substitute for an interconnection agreement. SGATs typically lack the kind of remedies and protections that interconnection agreements contain, often contain harmful provisions that operate like a "poison pill," and almost always are too vague and general to function as a surrogate for an interconnection agreement. For example, NextLink recently reported that when it asked BellSouth "why collocation could not simply be ordered out of the SGAT," BellSouth's personnel responded first by asking "what's an SGAT?" and later by claiming that the SGAT "lacked sufficient terms and conditions for collocation." See Falcone Aff. ¶ 86 (citing NextLink's Georgia Comments). And TCG was unable to obtain collocation at the rates mandated by the Georgia PSC for months; the situation changed only after TCG brought a formal complaint against BellSouth. See Falcone Aff. ¶ 131 and Attachment 2 (TCG complaint). Without a binding legal commitment to enforce against BellSouth, TCG would have had no remedy.

Finally, permitting BOCs to rely on SGATs for purposes of a Track A application would permit them to game the application process by waiting to make changes to their SGAT until the eve of a filing. Having made the change, they could then rush in to this Commission and claim that they will make the new language in the SGAT available to all interested CLECs. Meanwhile, the CLECs will have had no opportunity to negotiate for the new terms, no way to know what strings the BOC may insist on attaching as a quid pro quo, and -- even assuming

agreement can be reached -- no opportunity to test and confirm the BOC's ability to deliver the checklist item as promised.

Here, BellSouth does not even attempt to rely on any interconnection agreements governing the provision of collocation to permit CLECs to combine unbundled network elements. It cannot rely on such agreements, for it has not yet engaged in serious negotiations, let alone made a specific and binding commitment in an interconnection agreement, to allow a CLEC to combine unbundled loops and switching through collocation. See Falcone Aff. ¶ 25 (noting defects of existing agreements).

(b) Inadequacy of BellSouth's SGAT: Even if BellSouth could rely on its SGAT, its application would have to be denied because its SGAT contains precisely the same defects as the SGAT that this Commission determined was inadequate to support BellSouth's Track B application for South Carolina. There the Commission found that "the SGAT is deficient because it fails to include definite terms and conditions for recombining network elements." South Carolina Order ¶ 197. The same is true of the Louisiana SGAT.

With respect to UNE combinations, BellSouth's Louisiana SGAT states only that "[r]equesting carriers will combine the unbundled elements themselves." See BellSouth Louisiana SGAT § II.F. With respect to collocation, the SGAT states only that "[p]hysical and virtual collocation are available for interconnection and access to unbundled network elements" and that "[d]etailed guidelines for collocation are contained in BellSouth's Handbook for Collocation." Id. § II.B.6. That Handbook, and the Master Collocation Agreement to which the Handbook refers, are not attached to the SGAT. The Handbook has thus not been approved by the state commission, is subject to unilateral change by BellSouth, and expressly "does not represent a binding agreement in whole or in part between BellSouth and subscribers of

BellSouth's collocation service." BellSouth Collocation Handbook, Version 7.1, Apr. 24, 1998 at 4; see Tipton Aff. PAT Exh. 2 (emphasis added); Falcone Aff. ¶ 26. A vaguely worded SGAT, with an identical reference to an unapproved and non-binding Collocation Handbook and Master Collocation Agreement, is precisely what this Commission rejected as inadequate in its South Carolina Order. See id. at ¶¶ 185, 193 & n.569.

BellSouth has thus made no sincere effort to address the Commission's South Carolina holding. All that BellSouth has done is revise its Collocation Handbook (which it is free unilaterally to do), and provide descriptive material in affidavits. But as the Commission observed, "additional details" provided in affidavits "are not binding on BellSouth" and therefore do "not correct the problem -- that the SGAT's terms are too vague and therefore legally insufficient." Id. ¶ 197. For this reason, even if BellSouth could rely on an SGAT for purposes of Track A, this SGAT is fatally defective.

(c) Inadequate Paper Promises: Although promises in affidavits and non-binding handbooks are legally insufficient in themselves, BellSouth's paper promises are also substantively inadequate. BellSouth has not addressed even the preliminary concerns that the Commission previously raised about the indefiniteness of its proposal, let alone many others that are also important.

First, the Commission faulted BellSouth because its "SGAT does not commit BellSouth to any particular interval for entertaining and implementing requests for collocation." South Carolina Order ¶ 202. Although BellSouth now promises to meet intervals for some steps in the collocation process (e.g. responding to collocation requests and constructing space), it still has not committed to intervals for other steps (e.g. equipment installation and testing), or for virtual collocation. Falcone Aff. ¶¶ 78, 80. Moreover, even its promised intervals are vaguely

worded and subject to conditions that give BellSouth enormous discretion to ignore the intervals and extend the process for months. Id. ¶¶ 76-81. Notably, BellSouth, like other RBOCs, has admitted that if even one CLEC requests physical collocation in every central office in a state, that request "'would probably indeed cause a big bogdown'" in the construction of collocated space. See id. ¶¶ 82-83 (quoting BellSouth and Bell Atlantic testimony).

Second, the Commission found that BellSouth had "fail[ed] to demonstrate that it is in fact offering collocation in a timely manner." South Carolina Order ¶ 203 (emphasis added). The Commission cited evidence that "creates a concern that there may be significant delays as new entrants wait for collocation space to be constructed." Id. BellSouth has failed to present any evidence here that alleviates those concerns. The limited and incomplete information it provides on the handful of physical collocation arrangements completed to date in Louisiana not only fails to prove that BellSouth can meet its intervals, but demonstrates that it has not. See id.; Milner Aff. Exh. WKM-2 (line 8) (space construction alone for one of three arrangements took nearly 6 months). Moreover, the information available regarding BellSouth's performance in providing collocation in other states shows that CLECs continue to experience significant delays in ordering and obtaining space. See Falcone Aff. ¶¶ 85-86.

Third, the Commission found that BellSouth's collocation rates were "deficient" because BellSouth had failed to "include any rates for the space preparation fee" but rather left those "to further negotiation on an individual case basis [ICB]." South Carolina Order ¶ 204. Here again, BellSouth does not commit to specific pricing, but maintains ICB pricing for space preparation fees. Falcone Aff. ¶¶ 129-31. Although BellSouth contends that specific space preparation rates "simply [are] not possible," Br. 35, the Commission has already found to the contrary, stating that "it is possible" to quantify such fees and that BellSouth had already done

precisely that in the Commission's Expanded Interconnection proceeding. South Carolina Order ¶ 204 (emphasis added). Specific and binding space preparation rates are essential because BellSouth has admitted that "'the range'" for those rates would "'be tremendous'" and even "'cost prohibitive.'" Falcone Aff. ¶ 131 (quoting BellSouth testimony). BellSouth's offer to let CLECs review what other CLECs have paid (Br. 39) begs the question: If a CLEC can meaningfully derive a figure from past practice, why cannot BellSouth?

Finally, the Commission found that "BellSouth has failed to demonstrate that it can timely deliver unbundled network elements" to collocated space or that "provision of those combined elements will be at an acceptable level of quality." South Carolina Order ¶ 205. In this application, BellSouth fails not only to provide any "evidence of actual commercial usage" of collocated space to combine UNEs, but to commit to or even to estimate any intervals for provisioning UNE-combination orders in competitively reasonable volumes. Falcone Aff. ¶¶ 29, 92-94.

Of course, the failures just discussed include only those deficiencies that the Commission initially identified in rejecting BellSouth's first collocation proposal. BellSouth's proposal lacks specificity and firm commitments in many other ways as well. Notably, nowhere does BellSouth (1) commit to the "pre-wiring" its affiants say BellSouth will offer; (2) commit to or even describe methods and procedures for cutovers, inventories, or testing; (3) provide business rules for electronic ordering of loop/switch combinations; or (4) even mention how it proposes to permit CLECs to obtain other element combinations, such as dedicated transport and switching, loops and transport, and switching with a CLEC's own loops. See Bradbury Aff. ¶ 72; Falcone Aff. ¶¶ 60-64; 132-38; Hamman Aff. ¶ 56. In short, even BellSouth's "paper promises" (Ameritech Michigan Order ¶ 55) remain incomplete.

B. BellSouth Does Not Provide Nondiscriminatory Access To Its Operations Support Systems

This Commission has been appropriately explicit about the requirements for providing nondiscriminatory access to operations support systems. E.g., Ameritech Michigan Order ¶¶ 133-221. No BOC's local monopoly can be broken unless and until that BOC can "switch over customers as soon as the new entrants win them" -- and can do so regardless of which of the three entry paths an entrant has chosen to use. Id. ¶ 21. That is the standard that BOCs now routinely meet when accommodating long-distance competition (PIC changes) and that they will meet when they begin using PIC changes to switch over their new long-distance customers. It is thus the only standard that will make "entry into the local telecommunications markets . . . truly available" (id.) and allow entrants "[t]o compete effectively in the local exchange market" (South Carolina Order ¶ 82) -- and it is absolutely "vital" that it be in place before long distance relief is granted and the BOCs lose all incentive to provide the cooperation that is particularly crucial to nondiscriminatory access to OSS. See Local Competition Order ¶ 518.

Despite BellSouth's lamentable lack of progress, efficient electronic communication between systems is "technically feasible" (Local Competition Order ¶ 520), and meeting the Act's requirements is "readily achievable." Ameritech Michigan Order ¶ 143. And as the Commission has made clear, the Act requires nondiscrimination, not "perfection." Id. ¶ 203. Meeting the nondiscrimination standard, however, will require a genuine and sustained effort by a BOC that is truly committed to cooperating with CLECs and to treating their needs as those of a customer rather than a competitor. While BellSouth has made some progress, its shortfall to date is a reflection not upon the integrity of the standard but upon the prematurity of its application and its unwillingness fully to commit to achieving the nondiscrimination standard.

To determine whether the BOCs are meeting their "fundamental obligation" (id. ¶ 128) to provide competitors "the same access to the BOCs' operations support systems that the BOCs or their affiliates enjoy" (id. ¶ 21),[10] the Commission has set forth a "two-part inquiry." Id. ¶ 136. First, the Commission will examine whether the BOC has deployed interfaces that are capable of offering CLECs nondiscriminatory access and -- equally important -- whether the BOC is "adequately assisting" CLECs so that they can take advantage of that functionality. Id. Second, the Commission will look at the performance of the interfaces to see if they are operationally ready and capable of meeting "reasonably foreseeable demand volumes." Id. ¶¶ 136, 138.

In both the South Carolina and Louisiana orders, the Commission applied this two-part analysis to BellSouth's systems. See South Carolina Order ¶ 96; Louisiana Order ¶ 21 (using the determinations made in the South Carolina Order "as a starting point"). Each time, the Commission found BellSouth's systems deficient in numerous respects. Most notably, in the Louisiana Order, the Commission concluded that BellSouth had made only "marginal improvements" that "do not address the major deficiencies of BellSouth's operations support systems." Louisiana Order ¶ 22. These deficiencies "preclude competing carriers from being able to compete fairly with BellSouth and render it noncompliant with the competitive checklist." Id.

BellSouth should not have returned with another application until it had (1) fixed the problems the Commission had told it to fix and (2) demonstrated that in all other respects its

---

[10] See, e.g., Ameritech Michigan Order ¶¶ 130, 132, 135, 137, 139, 143; Local Competition Order ¶¶ 518, 519, 521, 523; Second Order on Reconsideration ¶¶ 9, 11 & n.32.

systems fully met the Commission's established standards. It has done neither. For example, BellSouth still has not remedied the following, previously cited defects:

(1) "excessive reliance on manual processing, especially for routine transactions" as indicated by a "disparity in order flow-through rates"; Louisiana Order ¶ 25; see Bradbury Aff. ¶¶ 33, 196, 242-48 (disparity now even worse); Pfau-Dailey Aff. ¶¶ 74-76 (same);

(2) failure to provide "order rejection notices in a timely fashion" due to "manual" intervention and "delay"; Louisiana Order ¶¶ 33-34; Bradbury Aff. ¶¶ 187-89 (more than 80 percent of rejections and error notices are not fully electronic and subject to delay); Pfau-Dailey Aff. ¶ 71 (average time for order rejection notice of two or more days);

(3) "not providing competing carriers with firm order confirmation notices on a timely basis"; Louisiana Order ¶ 38; South Carolina Order ¶¶ 122-124; see Pfau-Dailey Aff. ¶¶ 69-70 (BellSouth continuing to miss 24-hour minimum contractual standard for return of FOCs);

(4) "fail[ure] to notify carriers promptly when the due date cannot be met due to delays caused by BellSouth" (i.e., failure to provide timely electronic "order jeopardy notices"); Louisiana Order ¶ 40; South Carolina Order ¶ 131 n.392; see Bradbury Aff. ¶¶ 190-93 (still no electronic notice of service jeopardies);

(5) failure to provide data showing that competing carriers are being provided "timely receipt of order completion notices"; South Carolina Order ¶ 139; see Pfau-Dailey Aff. ¶ 23 (no data provided by BellSouth on average time for return of order completion notices to CLECs);

(6) failure to provide "the technical specifications necessary to integrate BellSouth's pre-ordering interface [LENS] with competing carriers' operational support systems and the EDI ordering interface"; Louisiana Order ¶ 49; see South Carolina Order ¶¶ 153, 162 (HTML parsing not equivalent access); Bradbury Aff. ¶ 159 (specifications require HTML parsing, resulting in an interface slower and less efficient than BellSouth's);

(7) failure to "offer competing carriers nondiscriminatory access to due dates"; Louisiana Order ¶ 56; see Bradbury Aff. ¶¶ 120-39 (still no access to calculated due dates).

In its overview (Br. 17-20) of its OSS compliance efforts, BellSouth does not even claim to have fixed most of these problems. It begins instead with a laundry list of supposed recent "enhance[ments]" to its systems. Id. at 18. These are misleading factually and do not respond

to many of the specific deficiencies that the Commission spelled out in the South Carolina and Louisiana orders. See id. (ignoring deficiencies in, e.g., EDI flow-through rates, electronic service jeopardy notices, and due-date calculation).

BellSouth then misstates the standard for evaluating OSS. It claims to have met the Commission's test by having made "[e]lectronic interfaces . . . available" that "meet existing industry standards." Br. 19. The Commission has repeatedly held, however, that merely deploying an electronic interface and adhering to "industry standards" is not sufficient to demonstrate nondiscriminatory access. E.g., South Carolina Order ¶ 121 & n.362; Louisiana Order ¶ 40 n.141.

Finally, BellSouth claims that its systems "have been subjected to extensive testing." Br. 20. Such testing is irrelevant where, as here, the evidence of "actual commercial usage" demonstrates noncompliance and it is BellSouth's own intransigence and checklist noncompliance -- rather than "competing carriers' business decisions" -- that accounts for the low volume of usage. Ameritech Michigan Order ¶ 138; see Bradbury Aff. ¶¶ 22, 284, 287; Augier Aff. ¶¶ 36-39. Furthermore, merely "subject[ing]" a system to "testing" proves nothing. That is particularly true here, where BellSouth's carrier-to-carrier and third-party testing has simply confirmed problems, and BellSouth's internal testing has been brief, superficial, undocumented, and unsupervised. Bradbury Aff. ¶¶ 160-66, 269-82, 317-22.

In short, BellSouth has not fixed the defects the Commission has already found. Worse still, in implementing purported "enhancements" to its systems, BellSouth has created serious new problems. By refusing to adhere to reasonable change control procedures, BellSouth has made access even more discriminatory in some respects than it was before, and vividly

demonstrated its extraordinary power to cut-off CLEC access to its systems and hence to the marketplace. See Bradbury Aff. ¶¶ 17-19, 32-63, 89-108.

We now summarize the reasons, set forth in detail in the affidavits of Jay Bradbury, Donna Hassebrock, and Michael Pfau and Katherine Dailey, why the OSS access that BellSouth provides is discriminatory. See also Norris Aff. (describing LPSC's limited OSS review).

1. BellSouth Has Not Provided CLECs With The Change Control Procedures And Business Rules Needed For Nondiscriminatory Access

No aspect of OSS access is easier to understand than the need for complete business rules and comprehensive change control procedures. BellSouth makes the business rules, knows them intimately, and designs for them; as a result, BellSouth's orders sail through its systems electronically and accurately. Similarly, BellSouth decides whether, when, and how to make a change to its systems; it controls the change process and can ensure that each change improves its systems.

CLECs are in a different position. Unless BellSouth gives CLECs all the business rules, CLECs cannot use the functionality that is nominally available to them in BellSouth's systems -- their orders will be delayed or rejected. Similarly, if BellSouth unilaterally makes changes to its systems, the "upgrade" from BellSouth's perspective can and often will destroy some of the functionality that a CLEC previously enjoyed. In the worst case, a BellSouth "upgrade" has the potential to knock a CLEC out of the market entirely.

For this reason, no incumbent can reasonably claim to have provided nondiscriminatory access to its OSS until it provides CLECs with all of the "business rules" and other "information necessary to format and process their electronic requests so that these requests flow through the interfaces, the transmission links, and into the legacy systems as quickly and efficiently as possible." Ameritech Michigan Order ¶ 137. Similarly, no incumbent can demonstrate

compliance as long as it continues to "make changes to its OSS functions" without properly involving CLECs in the change control process. See South Carolina Order ¶ 164; Ameritech Michigan Order ¶ 137. BellSouth's conduct over the past six months starkly illustrates the importance of these principles.

(a) **Change Control:** BellSouth has failed to implement or adhere to a proper change control procedure. In its application, BellSouth is careful to note that it views change control as applicable only to changes that "CLECs may propose." Br. 18 (emphasis added). That is not how BellSouth's official change control document reads (see Bradbury Aff. ¶ 39), but that is how BellSouth has interpreted it. See id. ¶¶ 40-41. Indeed, the reality is that BellSouth has failed time after time to give CLECs reasonable notice of or information about major system changes and refused to involve CLECs in planning for and working around potential problems involved in such changes. Id. ¶¶ 42-63, 89-109.

For example, although BellSouth congratulates itself for introducing a new "enhanced" version of its EDI interface, EDI-7 (Br. i, 18), BellSouth actually exploited that change to undercut the ability of CLECs to compete by refusing the joint request of numerous CLECs to keep the prior version, EDI-6, in place longer than 90 days. Bradbury Aff. ¶¶ 45-51. Reasonable practice dictates leaving the prior interface in place until the next version (i.e., EDI-8) is deployed -- an approach that is particularly important where the interface provider is also the users' chief competitor. Bradbury Aff. ¶¶ 47, 49.

BellSouth's stubborn refusal to accommodate the joint CLEC request left AT&T worse off for certain crucial orders with EDI-7 than it was with EDI-6. Without notice to AT&T, BellSouth's deployment of EDI-7 eliminated a workaround that AT&T and BellSouth had developed to address a problem caused by BellSouth's non-standard use of EDI-6. Bradbury

Aff. ¶¶ 91-100. When AT&T's testing uncovered the problems caused by BellSouth's changes in EDI-7, AT&T vigorously and repeatedly raised its concerns, while BellSouth did nothing. Specifically, BellSouth:

- refused to consider changes to EDI-7 that AT&T proposed and that AT&T believes would have solved the problem;
- refused to extend the availability of EDI-6 (except for a patently outrageous "$100,000/month" fee); and
- failed for weeks to provide AT&T with the information needed even to fax orders that BellSouth would accept, such that BellSouth's Service Center rejected a faxed order that BellSouth's subject matter experts had pre-approved.

Bradbury Aff. ¶¶ 46, 101-09; Hassebrock Aff. ¶¶ 44-47.

As a result, AT&T was left without any ability -- electronic or manual -- to place orders to migrate additional lines ("subsequent partial migrations") for its existing ADL customers. Bradbury Aff. ¶¶ 106-08; Hassebrock Aff. ¶¶ 46-47. This setback is devastating to AT&T's market entry with ADL, because of the importance of such orders: AT&T's experience shows that ADL customers typically start by moving only a few lines to AT&T, and then move additional lines once they are satisfied with AT&T's service. Hassebrock Aff. ¶¶ 36-38, 46-47. Thanks to BellSouth's "enhancements" and uncooperativeness, AT&T cannot accommodate its ADL customers' requests for more lines.

BellSouth's insistence on making unilateral, unannounced changes to its systems has undercut AT&T's ADL service in other ways as well. For example, AT&T is no longer able to place orders for "complex directory listings" for ported numbers. Hassebrock Aff. ¶¶ 61-65; Bradbury Aff. ¶¶ 57-59. These white pages listings include not only a main number but also the numbers of various branches or departments within the company, and are commonly requested by AT&T's ADL customers, and commonly used by BellSouth for its own customers.

Hassebrock Aff. ¶¶ 62-63; Bradbury Aff. ¶ 57. Here again, while AT&T initially had worked out a method for transmitting such orders, BellSouth unilaterally made changes that now cause its systems to reject these orders. Hassebrock Aff. ¶¶ 63-65; Bradbury Aff. ¶¶ 58-59. When AT&T's product manager for ADL in the southern region personally complained to BellSouth that this problem wholly precluded AT&T from offering service to these customers, BellSouth's representative told her only that her concerns were "so noted," and made no commitment to follow up. Hassebrock Aff. ¶ 65.

The affidavits of Jay Bradbury and Donna Hassebrock contain other examples of BellSouth's refusal to adhere to change control procedures, including BellSouth's unilateral implementation of a change that has eliminated CLECs' ability to access customer-service records ("CSRs") for UNE-customers; its failure to provide advance notice and documentation about a major revision of its pre-ordering interface (LENS Release 2.1); its repeated changes of position on whether USOCs should be included on orders for directory listings; and its changes to the ordering requirements for number portability. Bradbury Aff. ¶¶ 42-43, 52-56, 60-63, 142-44; Hassebrock Aff. ¶¶ 48, 56-58. The increased cost and uncertainty caused by these and other changes has served further to delay and weaken competitive entry. Bradbury Aff. ¶¶ 51, 54, 59, 63, 106, 109; Hassebrock Aff. ¶¶ 46-48, 55, 58, 68; Augier Aff. ¶ 38.

(b) Business Rules: Closely linked to the change control problem is BellSouth's failure to give CLECs complete business rules. Knowledge of BellSouth's business rules -- which are not contained in BellSouth's specifications and are unknown to CLECs unless BellSouth expressly discloses them -- is essential to the CLEC's ability to communicate effectively with BellSouth's systems. Ameritech Michigan Order ¶ 137 & n.335; South Carolina